

HOUSE BILL NO. 875

Introduced: 2/15/83

Referred to Committee on Judiciary: 2/15/83

Hearing: 2/21/83

Died in Committee

1 House BILL NO. 875
 2 INTRODUCED BY Steve J. Hansen J. Brown F. Long
 3 O'Connell et al

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A REAL ESTATE
 5 RECOVERY ACCOUNT FOR THE PAYMENT OF UNSATISFIED JUDGMENTS
 6 AGAINST REAL ESTATE SALESMEN AND BROKERS; PROVIDING FOR THE
 7 MAKING, ADJUDICATION, AND PAYMENT OF CLAIMS AGAINST THE
 8 ACCOUNT; PROVIDING FOR SUBROGATION OF RIGHTS OF THE BOARD OF
 9 REALTY REGULATION TO JUDGMENTS PAID FROM THE ACCOUNT;
 10 COORDINATING DISCIPLINARY PROVISIONS WITH OTHER POWERS OF
 11 THE BOARD; AMENDING SECTIONS 37-51-102 AND 37-51-311, MCA;
 12 REPEALING SECTION 37-51-304, MCA; AND PROVIDING AN EFFECTIVE
 13 DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 37-51-102, MCA, is amended to read:

17 "37-51-102. Definitions. Unless the context requires
 18 otherwise, in this chapter the following definitions apply:

19 ~~(1) "Account" means the real estate recovery account~~
 20 ~~established by [section 2].~~

21 ~~(2) "Board" means the board of realty regulation~~
 22 ~~provided for in 2-15-1867.~~

23 ~~(3) "Broker" includes an individual who for another~~
 24 ~~or for a fee, commission, or other valuable consideration or~~
 25 ~~who with the intent or expectation of receiving the same~~

1 negotiates or attempts to negotiate the listing, sale,
 2 purchase, rental, exchange, or lease of real estate or of
 3 the improvements thereon or collects rents or attempts to
 4 collect rents or advertises or holds himself out as engaged
 5 in any of the foregoing activities. The term "broker" also
 6 includes an individual employed by or on behalf of the owner
 7 or lessor of real estate to conduct the sale, leasing,
 8 subleasing, or other disposition thereof at a salary or for
 9 a fee, commission, or any other consideration. The term
 10 "broker" also includes an individual who engages in the
 11 business of charging an advance fee or contracting for
 12 collection of a fee in connection with a contract by which
 13 he undertakes primarily to promote the sale, lease, or other
 14 disposition of real estate in this state through its listing
 15 in a publication issued primarily for this purpose or for
 16 referral of information concerning real estate to brokers,
 17 or both, and any person who aids, attempts, or offers to
 18 aid, for a fee, any person in locating or obtaining any real
 19 estate for purchase or lease.

20 ~~(3)(4)~~ "Broker associate" means a broker who
 21 associates with a broker owner and does not own an interest
 22 in a real estate firm.

23 ~~(4)(5)~~ "Broker owner" means a broker who owns or has a
 24 financial interest in a real estate firm.

25 ~~(5)(6)~~ "Department" means the department of commerce

provided for in Title 2, chapter 15, part 18.

~~(6)(11)~~ "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

~~(7)(18)~~ "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(8)(21)~~ "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(9)(10)~~ "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase,

or negotiate for the sale, purchase, exchange, or renting of real estate."

NEW SECTION. Section 2. Real estate recovery account established -- minimum balance -- interest. (1) There is established in the earmarked revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter.

(2) The board shall maintain a minimum balance of \$50,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the earmarked revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

NEW SECTION. Section 3. Initial licensure and renewal assessment. (1) A person initially licensed under the provisions of this chapter in 1984 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of \$20 at the time of licensure, to be credited to the real estate recovery account.

(2) If on June 30 of any year, beginning in 1984, the balance in the real estate recovery account is less than

\$50,000, every person licensed under this chapter shall, when renewing his license, pay a sum not to exceed \$25 in addition to the annual renewal fee, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of \$50,000.

Section 4. Section 37-51-311, MCA, is amended to read:

"37-51-311. Fees -- deposit of fees. (1) The fees prescribed by the board shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not ~~file a bond with the department as provided in 37-51-304~~ pay any amount assessed by the board for deposit in the real estate recovery account, except as required in [section 5].

(3) The board shall adopt a schedule of fees. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased."

NEW SECTION. Section 5. Initial transfer of funds -- assessment of all licensees -- retransfer. (1) The amount of \$50,000 is transferred from the special revenue fund to

the real estate recovery account for the use of the board.

(2) Notwithstanding the provisions of 37-51-311, the board shall charge a fee of \$20 in addition to any other fee due under the provisions of Title 37, chapter 51, to all licensees, including licensees placed on inactive status, paying a renewal fee for the 1984 calendar year.

(3) Notwithstanding the provisions of [section (2)], \$50,000 is transferred from the real estate recovery account on March 1, 1984, or when the total balance of the account exceeds \$100,000, whichever occurs last, to the special revenue fund for the use of the board.

NEW SECTION. Section 6. Claims against fund -- orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter on grounds that the licensee used fraudulent, deceptive, or dishonest practices in or converted trust funds paid in any act or transaction occurring on or after July 1, 1983, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and [section 7], in the court in which the judgment was entered for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the

1 account may be made for:

2 (a) a judgment which has been satisfied;

3 (b) any amount in excess of \$15,000 for any one
4 licensee, regardless of the number of persons injured by
5 acts of the licensee or number of parcels of real estate
6 involved in the transaction or transactions;

7 (c) interest on the judgment;

8 (d) interest on any trust fund converted;

9 (e) costs, attorney fees, exemplary or punitive
10 damages; or

11 (f) amounts remaining unpaid on any judgment rendered
12 more than 2 years prior to the date of application.

13 (3) The application must be:

14 (a) served by certified mail, return receipt
15 requested, upon the board, the licensee, and any other party
16 to the transaction referred to in the application; and

17 (b) filed with the court along with an affidavit of
18 service.

19 NEW SECTION. Section 7. Form of application. The
20 person making application for payment from the account must
21 show in the application:

22 (1) that he is not the spouse of the debtor or the
23 personal representative of such spouse;

24 (2) that he has obtained a judgment which satisfies
25 the requirements of [section 6], stating the amount of the

1 judgment and the amount unpaid on the date of the
2 application;

3 (3) that he has, on the dates and at the times shown
4 by the applicant, diligently pursued the remedies of
5 execution and proceedings in aid of execution provided in
6 Title 25, chapters 13 and 14, respectively;

7 (4) the amount of any money obtained as a result of
8 the proceedings required to be shown in subsection (3) and
9 the balance of the judgment remaining unpaid for which
10 application is made; and

11 (5) that he has diligently pursued his remedies
12 against any other persons liable to him in the transaction
13 for which he seeks recovery from the account.

14 NEW SECTION. Section 8. Motion to dismiss
15 application. The board may move the court at any time to
16 dismiss the application if it appears that the application
17 is without merit. The motion may be supported by the
18 affidavit of any person having knowledge of the facts and
19 may be made on the basis that the application and the
20 judgment referred to therein do not form the basis for a
21 payable claim under [sections 6 and 7]. The board shall give
22 at least 10 days' written notice of any motion to dismiss.

23 NEW SECTION. Section 9. Hearing on application. (1)
24 Within 30 days of the filing of the affidavit of service,
25 the court shall conduct a hearing upon the application. Upon

1 the motion of the board, the court shall continue the
2 hearing up to 60 days and upon a showing of good cause may
3 continue the hearing such further period as the court
4 considers appropriate.

5 (2) At the hearing the court shall determine by a
6 preponderance of the evidence the truth of any allegations
7 made in the application and supporting documents that are
8 challenged by the board.

9 (3) The judgment upon which the application is based
10 is only prima facie evidence of the findings and conclusions
11 made therein and for the purposes of the application is not
12 conclusive of the facts and law found. The board may defend
13 any application for payment on behalf of the account and for
14 that purpose has recourse to all appropriate means of
15 defense, including examination of witnesses.

16 NEW SECTION. Section 10. Payment from account. (1) If
17 the court finds after the hearing that an applicant has
18 proved a valid claim against the account, the court shall
19 enter an order directed to the board requiring payment from
20 the account of whatever sum it finds to be due under the
21 provisions of [sections 2, 3, and 6 through 16].

22 (2) The board may, subject to court approval,
23 compromise and pay any application made under [sections 6
24 and 7]. The board is not bound by any prior compromise,
25 admission, or stipulation of the judgment debtor.

1 NEW SECTION. Section 11. Limitation of payment --
2 pro rata distribution. (1) The liability of the account may
3 not exceed \$15,000 for any one licensee until that licensee
4 has repaid the account as provided in [section 12]. If the
5 \$15,000 liability of the account is insufficient to pay in
6 full the valid claims of all applications that have been
7 filed against any one licensee and ordered to be paid, the
8 \$15,000 must be distributed among those claimants in the
9 ratio that the amount ordered to be paid to any one claimant
10 bears to the total amounts ordered to be paid or in such
11 other manner as the court considers equitable; and upon such
12 a distribution, all claims are considered satisfied by the
13 amount so distributed. Distribution of such money must, at
14 any time, be among the persons ordered to receive the same,
15 without regard to the order or priority in which their
16 respective judgments were obtained or their applications
17 filed.

18 (2) Upon petition of the board, the court may require
19 all existing applications for payment of claims against one
20 licensee to be joined in one proceeding for the purpose of a
21 timely determination of their respective rights to the money
22 in the account.

23 (3) An application for payment of a claim against a
24 licensee filed after the distribution of the full amount for
25 which the account is liable for that licensee and before

1 full repayment of the account under [section 12] must be
2 denied by the court.

3 NEW SECTION. Section 12. Repayment of fund --
4 suspension of license required. Upon the payment of any
5 amount from the account, the license of the licensee on
6 whose behalf the claim was paid is automatically suspended,
7 effective upon the date of the order of the court for
8 payment from the account. No licensee on whose behalf a
9 claim is paid may be granted reinstatement until he has
10 repaid in full, plus interest at the rate of 7% a year, the
11 amount paid from the account on his behalf. A discharge in
12 bankruptcy does not relieve a licensee from the penalty of
13 suspension required by this section.

14 NEW SECTION. Section 13. Claims satisfied in order of
15 filing. If account funds are insufficient to satisfy any
16 claim or portion of a claim ordered to be paid on behalf of
17 a licensee for whom the account liability of \$15,000 has not
18 been exceeded, the board shall, when sufficient money has
19 been deposited in the account, satisfy such unpaid claims or
20 portions of them in the order that the applications for such
21 claims were originally filed pursuant to [section 6]. The
22 board shall pay accumulated interest at the rate of 4% a
23 year on payments made under this section.

24 NEW SECTION. Section 14. Deposits by board. Money
25 received by the board under [sections 12 and 15] must be

1 deposited in the account and allocated exclusively for the
2 purposes provided in [sections 2, 3, and 6 through 16].

3 NEW SECTION. Section 15. Subrogation rights of board.
4 Upon payment of money from the account, the board is
5 subrogated to all of the rights of the judgment creditor to
6 the extent of the amount so paid and the judgment creditor
7 is considered to have assigned to the board all of his
8 right, title, and interest in the judgment to the extent of
9 the amount paid from the account. Any amount and interest
10 recovered by the board on the judgment must be deposited in
11 the account.

12 NEW SECTION. Section 16. Other disciplinary powers
13 unimpaired -- effect of repayment to fund. Nothing
14 contained in [sections 2, 3, and 6 through 16] limits the
15 authority of the board to take disciplinary action against
16 any licensee under other provisions of this chapter, nor
17 does the repayment in full of all obligations to the account
18 by any licensee nullify or modify the effect of any other
19 disciplinary action taken by the board under the provisions
20 of this chapter.

21 NEW SECTION. Section 17. Repealer. Section 37-51-304,
22 MCA, is repealed.

23 NEW SECTION. Section 18. Codification instruction.
24 Sections 2, 3, and 6 through 16 are intended to be codified
25 as an integral part of Title 37, chapter 51, and the

1 provisions of Title 37, chapter 51, apply to sections 2, 3,
2 and 6 through 16.

3 ~~NEW SECTION.~~ Section 19. Effective date. This act is
4 effective July 1, 1983.

-End-

STATE OF MONTANA

484-83
REQUEST NO.

FISCAL NOTE

Form BD-15

In compliance with a written request received February 19, 19 83, there is hereby submitted a Fiscal Note for House Bill 875 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 875 creates a Real Estate Recovery Account for the payment of unsatisfied judgements against real estate salesmen and brokers; provides for the making, adjudication, and payment of claims against the account; provides for subrogation of rights of the Board of Realty Regulation to judgments paid from the account; coordinates disciplinary provisions with other powers of the board; amends Sections 37-51-102 and 37-51-311, MCA; repeals Sections 37-51-304, MCA; and provides an effective date.

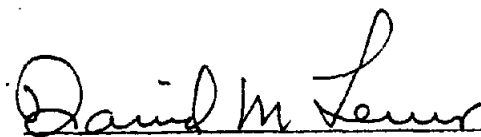
ASSUMPTIONS:

- 1) Assume 5000* licensees
- 2) Assume all licensee will pay \$20 first year to establish fund
- 3) Assume 575 new licensees pay \$20 each at time of original licensure
- 4) Assume expenditures to remain at current level

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Revenue	<u>\$100,000</u>	<u>\$11,500</u>

FISCAL NOTE 15: U/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-83